

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

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| ERVIN LEE MCFERRIN | § | |
| VS. | § | CIVIL ACTION NO. 1:17-CV-142 |
| PATEL PINKEE, ET AL. | § | |

ORDER OVERRULING PLAINTIFF'S OBJECTIONS AND ADOPTING THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

Plaintiff Ervin Lee McFerrin, a prisoner currently confined at the Eastham Unit of the Texas Department of Criminal Justice, Correctional Institutions Division, proceeding *pro se* and *in forma pauperis*, filed this civil rights action pursuant to 42 U.S.C. § 1983 against Patel Pinkee, Jeanne Bellanger, Michelle Lastrapes, and Stephen Henderson.

The court ordered that this matter be referred to the Honorable Zack Hawthorn, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to applicable laws and orders of this court. The Magistrate Judge recommends dismissing the action for failure to state a claim upon which relief may be granted.

The court has received and considered the Report and Recommendation of United States Magistrate Judge, along with the record and the pleadings. Plaintiff filed objections to the Magistrate Judge's Report and Recommendation.

The court has conducted a *de novo* review of the objections in relation to the pleadings and the applicable law. *See* FED. R. CIV. P. 72(b). Plaintiff contends the defendants were deliberately indifferent to his serious medical needs by prescribing Meloxicam for pain. Plaintiff alleges the medication caused him to vomit, but his prescription was not changed until five weeks later. These

actions do not rise to the level of egregious intentional conduct required to satisfy the deliberate indifference standard set forth in *Farmer v. Brennan*, 511 U.S. 825 (1994). See *Gobert v. Caldwell*, 463 F.3d 339, 351 (5th Cir. 2006). As a result, the Magistrate Judge correctly concluded that this action should be dismissed for failure to state a claim upon which relief may be granted.

ORDER

Accordingly, plaintiff's objections (document no. 25) are **OVERRULED**. The findings of fact and conclusions of law of the Magistrate Judge are correct, and the report of the Magistrate Judge (document no. 23) is **ADOPTED**. Defendants' motion to dismiss (document no. 18) is **GRANTED**. A final judgment will be entered in this case in accordance with the Magistrate Judge's recommendation.

So **ORDERED** and **SIGNED** this **17** day of **July, 2018**.



Ron Clark, United States District Judge